

## **REMARKS**

Claims 1-13, 15-16, 19, 21, and 47 are pending. Claims 14,17,18,20,22,23,28-46, 48-109 are withdrawn . Claims 24-27 have been canceled.

Support for the amendments to claims 1 and 47 is found at page 15, lines 1-19 of the as-filed specification.

**The drawings stand objected to under 37 CFR 1.83 as failing to show each feature of the claims.**

Regarding claim 1, the Examiner takes the position that “an inner surface having a first articulation surface” does not correspond with the Figures, as articulation surface is shown on an outer surface.

Applicants submit that since the as-amended claim now recites an intervertebral motion disc (having a configuration corresponding to the general type shown in FIG. 13) that includes an intermediate core and since the first articulation surface 24 is on a surface 23 that faces the core, then surface 23 should be considered an inner surface (relative to the core). Therefore, the objection should be withdrawn.

The Examiner further concludes that the measuring means (claim 24), the limitation “adapted to be actuated telemetrically” (claim 25), the motor (claim 26) and the hydraulic means (Claim 27) should be shown in the figures.

Applicant submits that since these claims have been canceled, the objection should be withdrawn.

**Claims 9, 10,13,15 and 24 stand objected to for various informalities. Claims 9 and 10 should replace “means” with –means for capturing--; claims 13 and 15 should replace “claim 5” with “claim 7”; and claim 24 should replace “means is adapted” with –means adapted--.**

Applicants have made the proposed changes and thanks the Examiner for the helpful suggestions. Claim 24 has been canceled.

**Claims 1-10, 12,13,15,16,19,24,25, and 47 stand rejected under 35 USC 112, second paragraph as indefinite.**

Regarding claims 1 and 47, the Examiner takes the position that “an inner surface having a first articulation surface” does not correspond with the Figures, as articulation surface is shown on an outer surface.

Applicants submit that since the as-amended claims 1 and 47 now recites an intervertebral motion disc (having a configuration corresponding to the general type shown in FIG. 13) that includes an intermediate core, and since the first articulation surface 24 is on a surface 23 that faces the core, surface 23 should be considered an inner surface (relative to the core) of the endplate. Therefore, the objection should be withdrawn.

Regarding claim 2, the elongated recess lacks antecedent basis and is indefinite with respect to “elongated channel”.

Applicants have replaced “elongated recess” with --elongated channel -- in claim 2.

Regarding claim 7, “the threaded throughhole” has no antecedent basis.

Applicants has made claim 7 to depend from claim 6, which provides the antecedent basis for the threaded throughhole.

Regarding claim 24, “ the captured screw” has no antecedent basis.

Claim 24 has been canceled.

**Claims 1-10, 12, 13, 15, 16, 19 24,25,47 stand provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being**

**unpatentable over claims 1,12,13,15,18-20,23-26,37,39,40,46-48 of copending application No. 11/015,927.**

Applicants will file a terminal disclaimer when and if needed.

**Claims 1-10, 12,13,15,16,19,24,25, and 47 stand rejected under 35 USC 102 as being anticipated by US Patent No. 6,045,579 (“Hochshuler”).**

Hochshuler relates to a fusion device (see Abstract). Therefore, Hochshuler does not disclose, teach or suggest a motion disc having an articulation interface at which two articulation surface articulate in a relative fashion. In fact, since the goal of a fusion devices is to discourage motion, Hochshuler would discourage providing an articulation interface.

**Claims 1-5, 24, 25, and 47 stand rejected under 35 USC 102 as being anticipated by US Patent No. 6,190,414 (“Young”).**

Young relates to a fusion device (see Abstract). Therefore, Young does not disclose, teach or suggest a motion disc having an articulation interface at which two articulation surface articulate in a relative fashion. In fact, since the goal of a fusion devices is to discourage motion, Young would discourage providing an articulation interface.

**Claims 1-5, 24, 25, and 47 stand rejected under 35 USC 102 as being anticipated by US Patent No. 6,454,806 (“Cohen”).**

Cohen relates to a fusion device (see Field of Invention and Background of Invention). Therefore, Cohen does not disclose, teach or suggest a motion disc having an articulation interface at which two articulation surface articulate in a relative fashion. In fact, since the goal of a fusion devices is to discourage motion, Cohen would discourage providing an articulation interface.

In addition, please provide any additional extensions of time which may be necessary and charge any fees which may be due to Deposit Account No. 10-0750, but do not include any payment of issue fees.

Should there be any remaining or further questions, the Examiner is requested to place contact the undersigned directly.

Respectfully submitted,

/Thomas M. DiMauro/

Thomas M. DiMauro  
Attorney for Applicants  
Reg. No. 35,490  
Johnson & Johnson  
1 Johnson & Johnson Plaza  
New Brunswick, NJ  
(508) 880-8401